

STATEMENT OF EMERGENCY

907 KAR 1:045E, Payments for Community Mental Health Center Services

(1) This emergency administrative regulation is being promulgated to enable the Department for Medicaid Services (DMS) to maximize limited state funds via an inter-agency agreement with the Department for Mental Health and Mental Retardation (DMHMR). This action will allow the Cabinet to replace general fund dollars with Medicaid dollars (state and federal) and is being implemented to ensure that necessary funds will be available for the continued operation of the Medicaid program and to maintain community mental health center funding at its current level. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health, safety, or welfare of Medicaid recipients whose receipt of services may be jeopardized due to a lack of funding.

(2) This emergency administrative regulation differs from the emergency administrative regulation on the same subject matter that was filed on June 27, 2003, in that it provides for adjusted payments to community mental health centers.

(3) This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

Paul E. Patton
Governor

Marcia R. Morgan, Secretary
Cabinet for Health Services

1 CABINET FOR HEALTH SERVICES

2 Department for Medicaid Services

3 Division of Medicaid Services for Mental Health/Mental Retardation

4 (Emergency Amendment)

5 907 KAR 1:045E. Payments for community mental health center services.

6 RELATES TO: KRS 205.520(3) and KRS 210.370

7 STATUTORY AUTHORITY: KRS 194A.030(3), 194A.050(1), 42 CFR 447.325, 42 USC
8 1396a-d

9 NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, De-
10 partment for Medicaid Services [~~Human Resources~~] has responsibility to administer the
11 program of Medical Assistance. KRS 205.520(3) authorizes [~~empowers~~] the cabinet, by
12 administrative regulation, to comply with any requirement that may be imposed, or op-
13 portunity presented by federal law for the provision of medical assistance to Kentucky's
14 indigent citizenry. This administrative regulation establishes [~~sets forth~~] the method for
15 determining amounts payable by the Medicaid program [~~cabinet~~] for community mental
16 health center services.

17 Section 1. Community Mental Health Centers. Participating in-state community mental
18 health centers [~~center providers~~] shall be reimbursed as follows:

19 (1) Effective July 1, 2003:

20 (a) The payment rate that was in effect on June 30, 2002, for community mental health
21 center services shall remain in effect throughout state fiscal year (SFY) 2004 and there

1 shall be no cost settling; and

2 (b) The payment provisions established in subsection (2) shall not apply.

3 ~~[(a) Payment rates for the rate year beginning July 1, 1991 shall be based on the fol-~~
4 ~~lowing principles:~~

5 ~~1. Interim (not final) rates for the nine (9) direct service cost centers shall be set based~~
6 ~~on the latest available cost and statistical data from the mental health centers.~~

7 ~~2. Costs used in setting the interim rates shall be trended to the beginning of the rate~~
8 ~~year and indexed for inflation to the end of the rate year.~~

9 ~~3. Direct service costs shall be arrayed (the "interim" array) and the interim rate upper~~
10 ~~limit set at 130 percent of the median cost per unit of service of all participating centers.~~

11 ~~4. The base rate shall be the allowable, reasonable cost for each service unit or the~~
12 ~~upper limit, whichever is less.~~

13 ~~5. A retrospective final settlement shall be made after the end of the rate year based on~~
14 ~~the fiscal year ending June 30, 1992 annual cost report. All costs shall be rearrayed (the~~
15 ~~final array) for the final settlement. For purposes of determining costs in excess of the up-~~
16 ~~per limit, the upper limit shall be the higher of the maximum derived from the interim array~~
17 ~~or the final array.~~

18 ~~6. Each facility shall have added to its rate, as a cost savings incentive payment, for~~
19 ~~each direct cost center an amount equal to fifteen (15) percent of the difference between~~
20 ~~the facility's actual reasonable allowable cost for the cost center and the upper limit based~~
21 ~~on the final array.~~

22 ~~7. A funding adjustment of fifty two (52) cents shall be added to the interim outpatient~~
23 ~~per unit rates, and the same funding adjustment (i.e., the same fifty two (52) cents) shall~~

1 ~~be allowed as a part of the final outpatient per unit rates (without regard to upper limits) to~~
2 ~~improve compensation of service providers and encourage provision of additional serv-~~
3 ~~ices.~~

4 ~~(b) Payment rates for the rate year beginning July 1, 1992 shall be based on the fol-~~
5 ~~lowing principles:~~

6 ~~1. Interim (not final) rates for the nine (9) direct service cost centers shall be set based~~
7 ~~on mental health center cost reports submitted for the six (6) month period ending De-~~
8 ~~cember 31, 1991.~~

9 ~~2. Costs used in setting the rates shall be trended to the beginning of the rate year and~~
10 ~~indexed for inflation to the end of the rate year.~~

11 ~~3. Direct service costs shall be arrayed and the upper limit set at 130 percent of the~~
12 ~~median cost per unit of service of all participating centers.~~

13 ~~4. The base rate shall be the allowable reasonable cost for each service unit or the up-~~
14 ~~per limit, whichever is less.~~

15 ~~5. Each facility shall have added to its rate, as a cost savings incentive payment, for~~
16 ~~each direct cost center an amount equal to fifteen (15) percent of the difference between~~
17 ~~the facility's actual reasonable allowable cost for the cost center and the upper limit.~~

18 ~~6. A funding adjustment amount (derived by dividing \$1.3 million by the number of out-~~
19 ~~patient units of service) shall be added to the interim rate (without regard to upper limits)~~
20 ~~to improve compensation of service providers and encourage provision of additional~~
21 ~~services.~~

22 ~~7. The interim rate shall be adjusted to final prospectively determined rates based on~~
23 ~~the audited or desk reviewed annual cost reports for the period ending June 30, 1992 with~~

1 the cost reports indexed for inflation, the upper limits previously determined remaining in
2 effect, and the same funding adjustment allowed.

3 (c) Payment rates for rate years beginning July 1, 1993 and July 1, 1994 shall be
4 based on the following principles:

5 1. Final prospectively determined rates for the direct service cost centers shall be set
6 based on each mental health center's fiscal year ending June 30, 1992 audited annual
7 cost report; if the cost report is not audited at the time of rate setting the rate shall be ad-
8 justed upon completion of the audit. Costs shall be actual, reasonable, and allowable
9 costs.

10 2. Costs used in setting the rates shall be trended to the beginning of the rate year and
11 indexed for inflation.

12 3. Direct service costs shall be arrayed and the upper limit set at 130 percent of the
13 median cost per unit of service of all participating centers.

14 4. The base rate shall be the allowable reasonable cost for each service unit or the up-
15 per limit, whichever is less.

16 5. Each facility shall have added to its rate, as a cost savings incentive payment, for
17 each direct cost center an amount equal to fifteen (15) percent of the difference between
18 the facility's actual reasonable allowable cost for the cost center and the upper limit.

19 6. A funding adjustment amount (derived by dividing \$1.3 million by the total number of
20 outpatient units of service) shall be added to the rate (without regard to upper limits) to
21 improve compensation of providers and encourage provision of additional services.

22 (2)(d) Payment rates for rate years beginning on or after July 1, 1995 shall be based
23 on the following principles:

1 1. Final prospectively determined rates for the direct service cost centers shall be set
2 based on each community mental health center's audited annual cost report for the prior
3 year; if the cost report is not audited at the time of rate setting, the rate shall be adjusted
4 upon completion of the audit or desk review. Costs shall be actual, reasonable, and allow-
5 able costs.

6 2. Costs used in setting the rates shall be trended to the beginning of the rate year and
7 indexed for inflation.

8 3. Direct service costs shall be arrayed and the upper limit set at 130 percent of the
9 median cost per unit of service of all participating centers.

10 4. The base rate shall be the allowable reasonable cost for each service unit or the up-
11 per limit, whichever is less.

12 5. Each facility shall have added to its rate, as a cost savings incentive payment, for
13 each direct cost center an amount equal to fifteen (15) percent of the difference between
14 the facility's actual reasonable allowable cost for the cost center and the upper limit.

15 6. A funding adjustment amount (derived by dividing \$1.3 million by the total number of
16 outpatient units of service) shall be added to the rate (without regard to upper limits) to
17 improve compensation of providers and encourage provision of additional services.

18 ~~[(2) Payment amounts shall be determined by application of the "Cabinet for Human~~
19 ~~Resources Community Mental Health – Mental Retardation Reimbursement Manual,"~~
20 ~~dated July 1, 1993, which is incorporated by reference in this administrative regulation]~~
21 ~~and supplemented by the use of the Medicare reimbursement principles. The Cabinet for~~
22 ~~Human Resources Community Mental Health – Mental Retardation Reimbursement Man-~~
23 ~~ual may be reviewed during regular working hours of 8 a.m. to 4:30 p.m. Eastern time in~~

~~the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.]~~

(3) Allowable costs shall not exceed customary charges which are reasonable. Allowable costs shall not include the costs associated with political contributions, travel and related costs for trips outside the state (for purposes of conventions, meetings, assemblies, conferences, or any related activities), the costs of motor vehicles used by management personnel which exceed \$20,000 total valuation annually (unless the excess cost is considered as compensation to the management personnel), and legal fees for unsuccessful lawsuits against the cabinet. However, costs (excluding transportation costs) for training or educational purposes outside the state shall be ~~[are]~~ allowable costs.

Section 2. Implementation of Payment System. (1) Payments shall ~~[may]~~ be based on units of service ~~[such as fifteen (15 minute or hourly increments, or at a daily rate, depending on the type of service)]~~. One unit for each service shall be defined as follows:

<u>Service</u>	<u>Unit of Service</u>
<u>Inpatient Service</u>	<u>15 minutes</u>
<u>Individual Therapy</u>	<u>15 minutes</u>
<u>Group Therapy</u>	<u>15 minutes</u>
<u>Family Therapy</u>	<u>15 minutes</u>
<u>Collateral Therapy</u>	<u>15 minutes</u>
<u>Intensive In-Home Therapy</u>	<u>15 minutes</u>
<u>Home Visit Service</u>	<u>15 minutes</u>
<u>Emergency Service</u>	<u>15 minutes</u>
<u>Personal Care Home</u>	<u>15 minutes</u>
<u>Evaluations, Examinations,</u>	<u>15 minutes</u>

<u>and Testing</u>	
<u>Therapeutic Rehabilitation for Children</u>	<u>1 hour</u>
<u>Therapeutic Rehabilitation for Adults</u>	<u>1 hour</u>
<u>Chemotherapy Service</u>	<u>15 minutes</u>
<u>Physical Examinations</u>	<u>15 minutes</u>

(2) Overpayments discovered as a result of audits shall be settled ~~[in the usual manner, i.e.,]~~ through recoupment or withholding.

(3) The vendor shall complete an annual cost report on forms provided by the cabinet not later than ninety (90) days from the end of the vendor's accounting year and the vendor shall maintain an acceptable accounting system to account for the cost of total services provided, charges for total services rendered, and charges for covered services rendered eligible recipients.

(4) Each community mental health center ~~[provider]~~ shall make available to the cabinet at the end of each fiscal reporting period, and at intervals as the cabinet may require, all patient and fiscal records of the provider, subject to reasonable prior notice by the cabinet.

(5) Payments due a ~~[the]~~ community mental health center shall be made at reasonable intervals but not less often than monthly.

Section 3. Nonallowable Costs. The cabinet shall not make reimbursement under the provisions of this administrative regulation for services not covered by 907 KAR 1:044, community mental health center services, nor for that portion of a community mental health center's costs found unreasonable or nonallowable in accordance with the ~~["Cabinet for Human Resources"]~~ "Community Mental Health - Mental Retardation Reimbursement Manual."

1 Section 4. Reimbursement of Out-of-state Providers. Reimbursement to participating
2 out-of-state community mental health centers [~~center providers~~] shall be the lower of
3 charges, or the facility's rate as set by the state Medicaid Program in the other state, or
4 the upper limit for that type of service in effect for Kentucky providers.

5 Section 5. Outpatient Access Support Adjusted Payment. (1) For a service provided
6 during the period beginning October 1, 2002 and ending June 30, 2004, the department
7 shall make an adjusted payment.

8 (2) An adjusted payment shall:

9 (a) Be made quarterly; and

10 (b) Be the difference between the costs as reported on the audited cost report ending
11 June 30, 2000 and current costs.

12 (3) Current costs shall be calculated as follows:

13 (a) Using the audited cost report ending June 30, 2000, costs shall be allocated to the
14 following cost centers:

15 1. Therapeutic rehabilitation;

16 2. Outpatient individual;

17 3. Outpatient group;

18 4. Outpatient psychiatry;

19 5. Outpatient in personal care home;

20 6. Outpatient in home setting; and

21 7. Hospital psychiatric;

22 (b) The Medicaid percentage for each cost center shall be determined by dividing the
23 cost center's Medicaid units of service by its total units of service;

1 (c) Medicaid costs per cost center shall be determined by multiplying the cost center's
2 total costs by its Medicaid percentage;

3 (d) Medicaid costs per cost center shall be inflated to the mid-point of the rate year us-
4 ing the Home Health Agency Market Basket, based on the "Health Care Cost Review"
5 First (1st) Quarter State Fiscal Year (SFY) 2003; and

6 (e) Include an increase in capital from the cost report ending June 30, 2000 to cost re-
7 port ending June 30, 2002 and the cost report ending June 30, 2003.

8 Section 6. Appeal Rights. A provider may appeal a Department for Medicaid Services
9 decision as to the application of this administrative regulation in accordance with 907 KAR
10 1:671.

11 Section 7. Incorporation by Reference.

12 (1) The "Community Mental Health - Mental Retardation Reimbursement Manual, July
13 2003 edition", is incorporated by reference.

14 (2) This material may be inspected, copied, or obtained, subject to applicable copyright
15 law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky,
16 40621, Monday through Friday, 8:00 a.m. to 4:30 p.m.

907 KAR 1:045E

Reviewed:

Date

Mike Robinson, Commissioner
Department for Medicaid Services

APPROVED:

Date

Marcia R. Morgan, Secretary
Cabinet for Health Services

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 907 KAR 1:045E

Cabinet for Health Services

Department for Medicaid Services

Agency Contact Person: Stuart Owen or Teresa Goodrich (502) 564-6204

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation establishes the reimbursement methodology for community mental health center services.
 - (b) The necessity of this administrative regulation: This administrative regulation is necessary in order to establish the reimbursement methodology for community mental health center services.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the reimbursement methodology for community mental health center services.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the statutes by establishing the reimbursement methodology for community mental health center services.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative regulation. The amendment to this administrative regulation will enable the Department for Medicaid Services (DMS) to maximize limited state funds via an interagency agreement with the Department for Mental Health and Mental Retardation (DMHMR).
 - (b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to enable the Department for Medicaid Services (DMS) to maximize limited state funds via an interagency agreement with the Department for Mental Health and Mental Retardation (DMHMR). This action will allow the Cabinet to replace general fund dollars with Medicaid dollars (state and federal) and is being implemented to ensure that necessary funds will be available for the continued operation of the Medicaid program and to maintain community mental health center funding at its current level.
 - (c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by enabling the Department for Medicaid Services (DMS) to maximize limited state funds via an interagency agreement with the Department for Mental Health and Mental Retardation (DMHMR). This action will allow the Cabinet to replace general fund dollars with Medicaid dollars (state and federal).

- (d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the authorizing statutes by enabling the Department for Medicaid Services (DMS) to maximize limited state funds via an inter-agency agreement with the Department for Mental Health and Mental Retardation (DMHMR). This action will allow the Cabinet to replace general fund dollars with Medicaid dollars (state and federal) and is being implemented to ensure that necessary funds will be available for the continued operation of the Medicaid program and to maintain community mental health center funding at its current level.
- (3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There are fourteen (14) community mental health centers providing services.
- (4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amending to this administrative regulation will enable funding to community mental health centers to remain at its current level.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
- (a) Initially: The State share shall be provided by the Department for Mental Health/Mental Retardation; therefore, there will be no unfunded increase in Department for Medicaid Services (DMS) annual expenditures.
- (b) On a continuing basis: The State share shall be provided by the Department for Mental Health/Mental Retardation; therefore, there will be no unfunded increase in Department for Medicaid Services (DMS) annual expenditures.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under Title XIX and Title XXI of the Social Security Act and state matching funds shall be used to implement the amendment to this administrative regulation.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The amendment to this administrative regulation does not increase any fee nor does it require any additional funding.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment to this administrative regulation does not establish any fees directly or indirectly.
- (9) Tiering: Is tiering applied? (Explain why tiering was or was not used)

Tiering was not appropriate in this administrative regulation because the administra-

tive regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The “equal protection” and “due process” clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

COMMONWEALTH OF KENTUCKY
CABINET FOR HEALTH SERVICES
DEPARTMENT FOR MEDICAID SERVICES

907 KAR 1:045E
Payments for Community Mental Health Center Services

Summary of Material Incorporated by Reference

The “Community Mental Health-Mental Retardation Reimbursement Manual, July 2003 edition” replaces the July 1, 1993 edition. The manual is used by agency staff and participating community mental health centers. The total number of pages incorporated by reference into this administrative regulation is 190 pages.

Part 1 of the manual’s general policy and guidelines section is being revised to include state fiscal year (SFY) 2004 reimbursement language. The manual is used by the Department for Medicaid Services staff and the community mental health centers.